

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAIKOLOA SANITARY SEWER COMPANY,)
INC., dba WEST HAWAII SEWER COMPANY))
For Approval of Amended)
Contribution-in-aid-of-Construction))
Fee. Transmittal No. 06-01.)
_____)

DOCKET NO. 2006-0090

ORDER NO. 22474

Filed May 18, 2006

At 2 o'clock P.M.

for Eleanor P. Luasasapa

Chief Clerk of the Commission

RECEIVED

2006 MAY 19 A 9:40

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KAREN HIGASHI

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Commission, State of Hawaii.

K. Higashi

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¹The Consumer Advocate is an *ex officio* party to this proceeding. See Hawaii Administrative Rules ("HAR") § 6-61-62(a). See also Hawaii Revised Statutes ("HRS") § 269-51. Waikoloa Mauka, WHSC, and the Consumer Advocate are collectively referred to as the "Parties."

I.

Background

A.

WHSC

The Waikoloa community in the South Kohala area on the island of Hawaii consists of two (2) utility service areas: (1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) West Hawaii Water Company ("WHWC") provides water utility service; and (2) WHSC provides wastewater utility service. West Hawaii Utility Company ("WHUC") provides water and wastewater utility services to the Waikoloa Beach Resort.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership.²

B.

WHUC and WHWC's Transmittals

On February 28, 2006, the commission opened an investigation of WHUC's and WHWC's transmittals to: (1) increase their respective CIAC fees; and (2) amend the present guidelines used to estimate water consumption in calculating the amount of CIAC owed by the developer or commercial applicant.

²On December 29, 2005, WHSC filed an application for a general rate increase utilizing the 2006 calendar test year. See In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Docket No. 05-0329 ("Docket No. 05-0329"). WHSC and the Consumer Advocate are the parties in Docket No. 05-0329, which is currently pending before the commission.

See In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co., Docket No. 05-0288 ("Docket No. 05-0288"), Order No. 22126, filed on November 17, 2005 (transmittals suspended for further commission review); Order No. 22300, filed on February 28, 2006 (investigation instituted pursuant to HAR § 6-61-57(3)(B)).

In addition, the commission held that under the facts and circumstances of Docket No. 05-0288: (1) WHUC's and WHWC's transmittals to increase their CIAC fees did not constitute "any increase in rates" under HRS § 269-16(b); and (2) the requirement of a public hearing under HRS § 269-16(b) was not implicated by the utilities' proposals to amend their respective CIAC tariff rules. See Order No. 22300.

C.

Transmittal No. 06-01

On March 21, 2006, WHSC filed Transmittal No. 06-01, seeking to amend its CIAC tariff Rule XI ("Rule XI") assessed to developers and commercial applicants. Specifically, WHSC proposes to increase the CIAC fee from the current \$7.25 per gallon of estimated daily sewer discharge ("EDSD") to \$32.39 per gallon of EDSD.³ WHSC filed its transmittal in accordance with HRS §§ 269-12(b) and 269-16(b) and HAR § 6-61-111.

As a condition to receiving service or substantially increasing sewage outflow volume from new or substantially

³WHUC's Transmittal No. 06-01; Exhibits 1 - 11; and Certificate of Service, filed on March 21, 2006 ("Transmittal No. 06-01"). WHSC served copies of Transmittal No. 06-01 upon the Consumer Advocate.

modified facilities, developers and commercial applicants must pay a non-refundable CIAC to WHSC. See WHSC Rule XI(1). WHSC utilizes CIAC funds for the purpose of expanding the capacity of its infrastructure. WHSC Rule XI(2). The CIAC fee required by WHSC as a condition of receiving service to a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. WHSC Rule XI(5).

The CIAC fee assessed by WHSC is calculated on the basis of the utility's estimate of: (1) the outflow from the customer's premises in the case of new facilities; or (2) the increase in outflow from the customer's premises in the case of substantially modified facilities. See WHSC Rule XI(7).

WHSC states that, due to rapidly expanding developments in the greater Waikoloa Village service area, significant new demands will be made upon WHSC's system in the near future. Thus, an increase in the CIAC fee is necessary to fund new and expanded sewage treatment plant facilities. In essence, WHSC claims that it must expand its sewage treatment plant facilities in order to meet the anticipated demand for its wastewater utility service. WHSC's proposed new CIAC fee of \$32.39 per gallon of EDSD is based on dollars per gallon of projected annual average sewer discharge for the projected new development.

In conclusion, WHSC asserts:

Adopting this amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b).

WHSC's Transmittal No. 06-01, at 6, ¶ 15.

D.

Commission Investigation

On April 3, 2006, the Consumer Advocate filed its Protest, recommending that the commission suspend Transmittal No. 06-01 for further review and a public hearing.⁴ On April 5, 2006, Waikoloa Mauka filed its Protest, recommending that the commission suspend and investigate Transmittal No. 06-01.⁵ On April 12, 2006, WHSC filed its Opposition to the Consumer Advocate's Protest, recommending that the commission: (1) deny the Consumer Advocate's request to suspend Transmittal No. 06-01; and (2) allow WHSC's transmittal to take effect, as proposed.⁶ On April 13, 2006, WHSC filed its Reply to Waikoloa Mauka's Protest, recommending that

⁴Consumer Advocate's Protest; and Certificate of Service, filed on April 3, 2006 (collectively, "Consumer Advocate's Protest").

⁵Waikoloa Mauka's Protest of Transmittal No. 06-01; and Certificate of Service, filed on April 5, 2006 (collectively, "Waikoloa Mauka's Protest").

⁶WHSC's Memorandum in Opposition to the Consumer Advocate's Protest; and Certificate of Service, filed on April 12, 2006.

the commission deny Waikoloa Mauka's request to suspend Transmittal No. 06-01.⁷

On April 17, 2006, the commission suspended Transmittal No. 06-01 and opened an investigation to examine the merits of WHSC's transmittal.⁸ On May 5, 2006, Waikoloa Mauka filed a Motion to Intervene, pursuant to HAR §§ 6-61-41 and 6-61-55.⁹ On May 10, 2006, WHSC filed its Opposition to Waikoloa Mauka's Motion to Intervene.¹⁰

II.

Discussion

A.

Waikoloa Mauka's Motion to Intervene

The standard for granting intervention is set forth in HAR § 6-61-55, which requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. Furthermore, HAR § 6-61-55(d) states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the

⁷WHSC's Reply to WHSC's Protest; and Certificate of Service, filed on April 13, 2006 (collectively, "Reply").

⁸Order No. 22392, filed on April 17, 2006. Interested persons were allowed to file a timely motion to intervene or participate with the commission within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B).

⁹Waikoloa Mauka's Motion to Intervene; Affidavit of Kevin C. Kellow; and Certificate of Service, filed on May 5, 2006 (collectively, "Motion to Intervene").

¹⁰WHSC's Opposition to Waikoloa Mauka's Motion to Intervene; Exhibit A; and Certificate of Service, filed on May 10, 2006 (collectively, "Opposition").

issues already presented." It is well-established that intervention as a party in a commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

Waikoloa Mauka, through the supporting affidavit of one of its managing members, avers:

1. Waikoloa Mauka is a Delaware limited liability company qualified to conduct business in the State of Hawaii.

2. On September 20, 2005, Waikoloa Mauka purchased and acquired from WDC and WLCC approximately 14,000 acres of unimproved land at Waikoloa for \$60 million (the "unimproved land").

3. Some of the unimproved land purchased by Waikoloa Mauka, "which are part of the bulk of the remaining developable lands in Waikoloa mauka of the Queen Kaahumanu Highway, fall within the service area" of WHSC.¹¹

4. In addition to the \$60 million purchase price, Waikoloa Mauka has expended and will continue to expend considerable sums of money in connection with the development of the unimproved land.

5. Waikoloa Mauka "owns certain lands which are presently zoned for multi-family and commercial use which and are located adjacent to the Waikoloa Village."¹² "WHSC included the development of these multi-family and commercial properties in

¹¹Affidavit of Kevin C. Kellow, at 2, ¶ 5.

¹²Id. ¶ 7.

its projections, which were submitted in Transmittal No. 06-01 in support of its CIAC fee increase."¹³ The "development of these lands located near the Waikoloa Village fall within WHSC's service area and would be subject to the payment of CIAC fees to WHSC as a condition to obtaining sewerage service."¹⁴

6. Based on Waikoloa Mauka's preliminary estimates, "the \$27 million sought by WHSC to increase plant capacity by less than 1 million gallons of treatment capacity per day seems somewhat excessive."¹⁵

In its Motion to Intervene, Waikoloa Mauka further asserts:

1. The bulk of the unimproved land is zoned or planned for residential or commercial, some of which falls within WHSC's service area, and will require sewerage service from WHSC.

2. As the largest landowner within WHSC's service area, Waikoloa Mauka's financial and property interests are different from the interests the Consumer Advocate is empowered by statute to protect.

3. "Given [Waikoloa Mauka's] unique situation of owning nearly all of the available developable lands in Waikoloa mauka of the Queen Kaahumanu Highway, some of which are believed to be within WHSC's service area and will be subject to the payment of a CIAC fee, [its] participation in this proceeding

¹³Id. at ¶ 8.

¹⁴Id. at ¶ 9.

¹⁵Id. at ¶ 10.

can greatly assist in the development of a sound record[,] "¹⁶ and "in ensuring that the proposed changes are just and reasonable and in the public interest."¹⁷ In effect, Waikoloa Mauka "will directly be impacted by WHSC's proposed changes to its CIAC fee and rules and subject to the payment of the CIAC fee to WHSC."¹⁸

4. Waikoloa Mauka's allegations are reasonably pertinent and its participation will not unduly broaden the issues or delay the proceeding.

WHSC opposes Waikoloa Mauka's intervention, asserting that Waikoloa Mauka has not met its burden of proving that intervention is warranted under HAR § 6-61-55. In support thereto, WHSC contends:

1. Waikoloa Mauka has no right to participate in this docket and it has not identified any actual property interest. Specifically, WHSC's claim that some of the lands are believed to be within WHSC's service area highlights Waikoloa Mauka's lack of standing in this docket.

2. Waikoloa Mauka fails to provide any cogent reasons or explain why the Consumer Advocate is unable to satisfactorily represent Waikoloa Mauka's claim interests.

3. The sole, actual issue is WHSC's request to amend its CIAC fee, "not how [Waikoloa Mauka's] CIAC fee payment may be calculated at some future date for some speculative

¹⁶Waikoloa Mauka's Motion to Intervene, at 4, ¶ 7.

¹⁷Id. at 5, ¶ 10.

¹⁸Id. at ¶ 9.

development."¹⁹ Consequently, Waikoloa Mauka's intervention will unreasonably broaden the issue presented, and unreasonably delay the proceeding.

In the event the commission is inclined to grant Waikoloa Mauka's Motion to Intervene, WHSC suggests that as an alternative, in lieu of intervention, Waikoloa Mauka should be limited to participant status in accordance with HAR § 6-61-56.

Here, WHSC proposes to increase its CIAC fee, and the commission must review whether WHSC's proposal to increase its CIAC fee is just and reasonable, in accordance with HRS § 269-16(a).²⁰ Waikoloa Mauka alleges (through the sworn affidavit of its representative) that it purchased 14,000 acres of unimproved land in Waikoloa, including portions of land situated within WHSC's service area, which will be subject to the payment of CIAC fees to WHSC as a condition to obtaining sewerage service. Under the circumstances, the commission finds that Waikoloa Mauka has a direct property and financial interest in WHSC's proposal to increase its CIAC fee. Waikoloa Mauka, in effect, expresses its concern that "WHSC has not submitted sufficient documentation to support [WHSC's] proposed capital expenditure of \$24,673,000 plus financing charges of \$2,645,000[,]" to expand WHSC's wastewater treatment facility.²¹ Ultimately, Waikoloa Mauka appears to question the amount of WHSC's proposed increase in the CIAC fee, from \$7.25 to

¹⁹WHSC's Opposition, at 3.

²⁰See also HRS § 269-16(b).

²¹Waikoloa Mauka's Motion to Intervene, at 3, ¶ 4.

\$32.39 per gallon of EDSD, and the basis and methodology used in calculating the proposed increase.

Therefore, the commission finds that: (1) Waikoloa Mauka's participation in this proceeding can assist in developing a sound record; and (2) the allegations by Waikoloa Mauka in its Motion to Intervene are pertinent to the issues raised in WHSC's transmittal, and will not unreasonably broaden said issues. The commission, thus, grants Waikoloa Mauka's Motion to Intervene.

Concomitantly, the commission will preclude any effort by Waikoloa Mauka to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider Waikoloa Mauka's participation in this docket if, at any time during the course of this proceeding, the commission determines that Waikoloa Mauka is unreasonably broadening the pertinent issues raised or unduly delaying the proceeding.

B.

A Public Hearing is Not Required

As in Docket No. 05-0288, the Consumer Advocate asserts that a public hearing is required in this docket pursuant to HRS § 269-16(b).²² In response, WHSC reiterates that its proposal to amend its CIAC fee does not involve an increase in rates to its

²²See Consumer Advocate's Protest, at 1 and 6 - 15; and Order No. 22392, at 5 - 6.

ratepayers, and thus, may be established after thirty (30)-day notice, subject to the commission's discretion.²³

In Docket No. 05-0288, the commission held that a public hearing was not required under HRS § 269-16(b) and the facts and circumstances of that case.²⁴ Applying the same rationale in Docket No. 05-0288 to the facts and circumstances in this case, the commission finds that: (1) WHSC's proposal to increase its CIAC fee does not constitute "any increase in rates" under HRS § 269-16(b); and (2) the requirement of a public hearing under HRS § 269-16(b) is not implicated by WHSC's proposal to amend its CIAC tariff rule.²⁵

III.

Orders

THE COMMISSION ORDERS:

1. Waikoloa Mauka's Motion to Intervene, filed on May 5, 2006, is granted.

2. WHSC, the Consumer Advocate, and Waikoloa Mauka shall submit to the commission a stipulated procedural schedule,

²³See WHSC's Opposition, at 3 - 4; and Order No. 22392, at 7.

²⁴Order No. 22300, filed on February 28, 2006.

²⁵As noted by the commission in Order No. 22300:

This reasoning is consistent with the commission's practice of allowing changes in a public utility's CIAC tariff rule, including changes in the amount of the CIAC fee, to take effect by thirty (30)-day tariff filing under HRS §§ 269-12(b) and 269-16(a) and (b) and HAR § 6-61-111.

Order No. 22300, at 13. See, e.g., Waikoloa Resort Utilities, Inc.'s Transmittal No. 94-01, filed on January 31, 1995 (increasing the utility's CIAC fee upon thirty (30)-day notice).

incorporating their agreed-upon schedule with respect to this proceeding, within thirty (30) days from the date of this Order. If the parties are unable to stipulate to such a schedule, each party shall submit a proposed procedural schedule for the commission's consideration by the same date.

3. A public hearing is not required under HRS § 269-16(b) and the facts and circumstances of this case.

DONE at Honolulu, Hawaii MAY 18 2006.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2006-0090.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22474 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: MAY 18 2006